



Report to the Auburn City Council

Action Item
Agenda Item No. 4
City Manager's Approval

To: Mayor and City Council Members
From: Reg Murray, Senior Planner
Date: February 9, 2009
Subject: Professional Services Agreements for Baltimore Ravine Specific Plan – PBS&J, Adrienne Graham, KD Anderson, and NexGen Utility Management

The Issue

Shall the City enter into consultant contracts with PBS&J, Adrienne Graham, KD Anderson, and NexGen Utility Management to assist the City in its review and preparation of the Baltimore Ravine Specific Plan (BRSP) and the Baltimore Ravine Environmental Impact Report (BRSP EIR)?

Conclusions and Recommendations

Staff recommends that the City Council take the following action:

- A. By Resolution, authorize the Community Development Director and the Public Works Director to execute agreements for consulting services between the City of Auburn and PBS&J, Adrienne Graham, KD Anderson, and NexGen Utility Management to assist the City in its review and preparation of the Baltimore Ravine Specific Plan and the Baltimore Ravine Environmental Impact Report.

Background

The City of Auburn is currently processing an application to process a specific plan for the Baltimore Ravine area in southwest Auburn. The processing of the project includes the Baltimore Ravine Specific Plan (BRSP) and an Environmental Impact Report (EIR). The City and the project proponent originally recognized that the processing of the project would require a significant amount of staff time as well as technical expertise in several areas. As such, the City identified several consultants to assist them with processing the BRSP and the BRSP EIR, including PBS&J (EIR preparation); Adrienne Graham (processing and review of the BRSP and BRSP EIR); KD Anderson (traffic engineering); and NexGen (wastewater). Contracts with these consultants were approved by the City Council in late 2007 and early 2008.

Due to pending changes to the scope of the proposal, as well as the expiration of two contracts at the end of 2008 (PBS&J; NexGen), staff is requesting that the City Council amend the existing contracts. Copies of the Professional Services Agreements (PSA), along with revised scopes of work and fee schedules, are provided for PBS&J, Adrienne Graham, KD Anderson, and NexGen

as Attachments 1-4, respectively. The total contract work done to date by each of the consultants, as well as the new contract amounts, are provided below:

- PBS&J – Services to date total ±\$149,000. The revised contract for completion of the remaining work is \$234,295.
- Adrienne Graham – Services to date total ±\$68,000. The revised contract for completion of the remaining work is \$65,000.
- KD Anderson – Services to date total \$7,250. The revised contract for completion of the remaining work is \$10,305.
- NexGen – Services to date total ±\$51,500. The revised contract for completion of the remaining work is \$16,000.

Alternatives Available; Implications of Alternatives

1. Approve the consulting services contracts.
2. Direct staff to seek additional proposals.

Fiscal Impact

None. Preparation of the Baltimore Ravine Specific Plan and the Baltimore Ravine Environmental Impact Report is “at cost,” therefore, the developer is responsible for all costs associated with the preparation of both the BRSP and the BRSP EIR.

Additional Information

1. Resolution with attached Professional Services Agreement and scope of services for PBS&J.
2. Resolution with attached Professional Services Agreement and scope of services for Adrienne Graham.
3. Resolution with attached Professional Services Agreement and scope of services for KD Anderson & Associates.
4. Resolution with attached Professional Services Agreement and scope of services for NexGen Utility Management.

cd:/City Council/Reports/BRSP Consultant Contracts Amended.CCreport1

1 RESOLUTION NO. 09-

2 RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT WITH
3 PBS&J
4 -----

5 THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City of Auburn (City) does hereby approve an amended
7 Professional Services Agreement between PBS&J, a Florida corporation, and
8 the City to prepare an Environmental Impact Report (EIR) on behalf of the City
9 of Auburn for the Baltimore Ravine Specific Plan. The contract has a not-to-
10 exceed total of \$234,295.

11 The Community Development Director is hereby authorized and directed
12 to execute said Professional Services Agreement on behalf of the City.
13

14 DATED: February 9, 2009
15

16 _____
J.M. Holmes, Mayor

17 ATTEST:
18

19 _____
Joseph G. R. Labrie, City Clerk
20

21
22 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
23 that the foregoing resolution was duly passed at a regular meeting of the City
24 of Auburn held on the 9th day of February, 2009 by the following vote on roll
call:

25 Ayes:

26 Noes:

27 Absent:

28 _____
Joseph G. R. Labrie, City Clerk

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn /PBS&J, a Florida Corporation)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and PBS&J, a Florida Corporation ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Please see Exhibit A, Scope of Work; and Exhibit B, Cost Estimate.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 16, 2009, proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 16, 2009 fee schedule (cost estimate) to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": February 3, 2009
- 3.4 "Expiration Date": December 31, 2009

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any

such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Two Hundred and Thirty-four Thousand Two Hundred Ninety-five Dollars (\$234,295) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work in a manner consistent with the standards of care, diligence and skill ordinarily exercised by other professional consultants under similar circumstances and in accordance with customarily accepted professional practices and procedures and in a manner reasonably satisfactory to the City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Will Wong, Community Development Director or Reg Murray, Senior Planner shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not

withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant. Consultant shall not be liable for the unapproved use, re-use, or modification of the deliverables or other documents of service without Consultant's express written authorization.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this

Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold

harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

11.1.3 Worker's Compensation insurance as required by the laws of the State of California.

11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.

11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds.

Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x____
Facsimile: (530) 823-4216

If to Consultant:

Christine Kronenberg, AICP
PBS&J
1200 2nd Street
Sacramento, CA 95814
Telephone: (916) 325- 4800
Facsimile: (916) 325 - 4810

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024

Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted

for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's reasonable judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the

express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
PBS&J

By _____

By: _____
Catherine C. McEfee, Associate Vice President/Senior
Program Manager

Date: _____

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to form:

By _____
Michael G. Colantuono, City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK



Memorandum

To: Will Wong, City of Auburn Community Development Director

From: Christine Kronenberg

Date: January 16, 2009

Subject: BRSP – New EIR Scope, Schedule and Budget Based on New (January 2009) Land Use Plan

In April 2008 PBS&J submitted the BRSP ADEIR to the City and the applicant for review. After receipt of City and applicant comments on the ADEIR the project went on hold and a new land use plan was submitted to the City in December 2008. The new land use plan develops approximately 37% of the project site versus the prior land plan that developed approximately 74% of the project site. This scope of works covers the tasks to prepare a new Notice of Preparation, ADEIR, 2nd ADEIR, Screencheck, DEIR and FEIR based on the new land use plan. This scope of work assumes much of the information already compiled for the April 2008 ADEIR will be used to prepare this new ADEIR. PBS&J has prepared a new scope of work and project budget to revise the April 2008 ADEIR to address the applicant's new land use plan.

This memo outlines the additional work required to revise the April 2008 ADEIR based on the applicant's new land use plan (December 12, 2008) and Specific Plan. This revised scope of work assumes that the prior technical studies completed by PBS&J (cultural report, biological technical report, and the special-status plant report) are still current and will not need to be revised. It also assumes the wetland delineation prepared by Davis Consulting Earth Sciences, the Geotechnical Feasibility Report prepared by Engeo, and the Phase 1 and 2 ESAs also prepared by Engeo are also still current will not be revised.

In order to prepare a complete ADEIR, PBS&J will need the applicant to provide the following information:

- Technical Report that addresses Mine Issues (Mine Report) being prepared by Geocon;
- City's service level standards for police and fire;
- Revised Baltimore Ravine Specific Plan and Design Guidelines;
- Water, stormwater and wastewater infrastructure plans for each project phase;
- Construction phasing information and information on grading assumptions;
- Revised Sanitary Sewer Study (that addresses a reduction in units/population);
- Updated Master Drainage Report (to address a decrease in impervious surface area).

The following information is still pending from the City:

- Status of the Mineral Resource Zone overlay provided on the project site;
- Status of mitigation measures recommended by the PCAPCD to address climate change.

To address city comments on the April 2008 ADEIR, PBS&J staff met with the City to review mitigation measures for cultural resources, hazardous materials, and biological resources. Revisions to these mitigation measures were prepared and reviewed by the City. It is anticipated that these changes would be adequate to address changes due to the new land use plan. However, if necessary they will be revised and updated to reflect the new plan.

Due to the number of comments received on the April 2008 ADEIR, this scope of work includes preparation of a 2nd ADEIR to ensure all comments were addressed to the satisfaction of the city and the applicant. If, after review of the ADEIR, the City determines that a 2nd ADEIR is not required then PBS&J will not expend any labor on this task.

Task 1: Prepare Revised NOP

PBS&J will prepare an internal review draft NOP for city and applicant review and comment. Based on comments received, PBS&J will revise the internal review draft and prepare the NOP for public circulation. PBS&J will provide the City with an electronic copy for posting on the City's website. It is assumed the City will mail copies of the NOP or a notice of its availability to all interested parties. PBS&J will deliver copies to the State Clearinghouse.

This task assumes only the city and the applicant will only have minor revisions to the NOP and will review only one version of the document. If more than one round of reviews is required it would be considered out of scope.

Task 2: Prepare DEIR

Subtask 2.1: Prepare ADEIR

To the extent applicable the existing information and analysis completed as part of the April 2008 ADEIR will be used to prepare this revised ADEIR. Every chapter and section of the EIR will be reviewed, revised, and updated to reflect the new land use plan, prior city and applicant comments as well as any changes to the existing setting or regulatory setting since the original ADEIR was prepared. The following provides additional detail on the type of revisions required for the technical sections.

Introduction - The EIR will include an Introduction chapter that contains a discussion of the project background, summary of the proposed project, purpose of the EIR, scope of the EIR, environmental review process, and report organization.

Summary - The EIR will include a summary chapter that clarifies for the lay reader the importance of the conclusions of the EIR. The summary will briefly describe the EIR process, the project and alternative descriptions, potentially controversial issues, and comments received on the NOP. A summary table will be provided, consisting of a matrix of impacts and mitigation measures, including levels of significance of impacts before and after mitigation for the project. A table summarizing the relative impacts of the alternatives will also be provided. This chapter can be bound separately to serve as the executive summary.

CEQA Considerations - The EIR will also include other CEQA-required sections including growth-inducing impacts, irreversible environmental effects, and a summary of significant and unavoidable impacts.

Growth-Inducing Impacts - The EIR will discuss the ways that the proposed project could foster direct and/or indirect economic or population growth or the construction of additional housing in the vicinity and how that growth will, in turn, affect the surrounding environment.

Irreversible Environmental Effects - The EIR will evaluate the proposed project for significant irreversible environmental changes consistent with CEQA Guidelines section 15126.2(c).

Significant and Unavoidable Impacts - The EIR will include a summary of all significant and unavoidable impacts identified and discussed in each of the technical sections of the EIR.

Cumulative Impacts - A summary of cumulative impacts identified for the proposed project (discussed in detail in each technical section). Actions taken by the City will be considered as to the relevance for the cumulative context.

Project Description – All references to an age-restricted component will be removed from the project description as well as the entire document. The Project Description will describe the land use assumptions of Phase I and Phase II of the project. The Study Areas have not changed so their description will stay the same. It is assumed that the EIR will analyze both phases of the project at a project-level even though only land use assumptions will be provided for Phase II. The Study Areas will continue to be addressed on a program-level. Graphics that depict the area of development will need to be revised along with the infrastructure plans and project phasing assumptions as well as the project objectives. It is assumed this information would be provided by the applicant or the city and that all new project graphics will be provided by the project applicant or their consultants.

This task assumes the city and the applicant will only have minor revisions to the Project Description and will review only one version. If more than one round of reviews is required it would be considered out of scope.

Land Use and Demographics – The Land Use chapter will be revised and updated to reflect the revised land use plan. It is anticipated that this chapter will only need minor revisions.

Aesthetics and Visual Resources – Based on prior comments received from the City and the applicant on the Aesthetics section it is assumed the City will revise the setting portion of the section and PBS&J will revise the impact analysis. PBS&J assumes the applicant will provide PBS&J with the Design Guidelines from the Specific Plan to incorporate in the analysis and that this section will only take 12 hours to revise. No photosimulations will be included.

Air Quality and Climate Change - Construction and operation-related emissions will be remodeled based on new grading and construction equipment assumptions. The modeling will be done by project phase (Phase I and Phase II). Since more information will be available for Phase I the modeling will be more specific. It is assumed that the project applicant's engineer will provide PBS&J with grading and equipment assumptions for Phase I and, if available,

Phase II. However, Phase II the model may need to rely in default assumptions. The project's contribution to CO₂ will also be remodeled based on the new traffic information (vehicle miles traveled). PBS&J assumes a moderate level of effort would be required to redo the modeling and update the section based on prior city comments as well as any new information.

Revisions to applicable mitigation measures to address climate change will need to be discussed with the Placer County Air Pollution Control District. PBS&J will coordinate with the City's consultant to contact the district. It would be helpful if the applicant could provide PBS&J with a list of acceptable energy and water conservation methods that would be applicable to the project.

Biological Resources - The Biological Resources section will be updated based on the smaller development footprint. The Arborist Report will be revised to reflect more areas of open space that include trees that would not be affected by development activities. All references to preparation of a Timber Harvest Plan will be removed.

Cultural and Paleontological Resources - The existing Cultural report is complete and will not need to be updated. The area where paleontological resources exist that may be disturbed associated with development has been reduced under the new land use plan. This discussion will be revised. In addition, revisions made to the language of the prior mitigation measures based on input from the City will be included. Also, information from the Mines Report will be included in this section and additional refinements to specific mitigation measures may be required.

Geology, Soils and Mineral Resources - This section will be revised based on the Mines Report to be provided by the applicant. The analysis will also be revised to reflect that all developed areas will be on slopes with a less than 20 percent grade. The City's consultant is to provide information to PBS&J regarding the status of the mineral resource zones present on the project site.

Hazardous Materials and Public Safety - The Mine Report will be used to update this section.

Hydrology and Water Quality - The Hydrology section will be updated and revised based on the reduction in developed area. It is assumed the applicant will provide PBS&J with an updated Master Drainage Report and project-specific information on proposed drainage and water infrastructure for each project phase.

Noise and Vibration - See attached scope of work from Bollard Accoustical Consultants to revise the noise modeling and to update the noise analysis for the EIR.

Public Services - The Public Services section will be updated to reflect a reduction in population and number of residential units. The applicant is to provide PBS&J with service standards to use in evaluating potential impacts to fire and police protection.

Public Utilities - Due to the reduction in residential units and commercial space the water provider, PCWA, may choose to revise the WSA. The section will be updated based on the new

project assumptions along with a revised Master Sanitary Sewer Study. The section will be revised and updated based on the new land use plan as well as the revised technical reports.

Transportation and Circulation – The applicant will provide PBS&J with an updated traffic section for inclusion in the ADEIR.

Alternatives - The EIR will analyze up to four alternatives (including the required No Project alternative). The basis for selecting each alternative will be provided. A discussion of alternatives that were considered but rejected or evaluated with a lesser level of analysis will also be included. The alternatives analysis will be qualitative: impacts of project alternatives will be compared to those of the proposed project. Where impacts of the alternatives and the proposed project are similar, the EIR will briefly explain why the impacts would be similar. The EIR will contain more detail in cases where impacts would differ between the alternatives and the proposed project. The EIR will also include a table that compares impacts of the proposed project with all the alternatives.

Work Products

- 15 copies of the ADEIR plus on CD in MSWord format for the City and in .pdf format for the applicant

Subtask 2.2: Revised (2nd) New ADEIR

Based on one consolidated set of comments, or memos provided by City staff on the ADEIR, PBS&J will prepare a Revised (or 2nd) New ADEIR that will incorporate modifications made to the ADEIR for the City to ensure that all agreed to revisions are incorporated to the City's satisfaction. Comments on the ADEIR will be incorporated in the Revised New ADEIR in track changes. It is assumed that review of the Revised New ADEIR will not result in any new technical analysis or substantial text revisions.

Work Products

- 5 copies of the Revised New ADEIR plus on CD in MSWord for the City and in .pdf format for the applicant

Subtask 2.3: Screencheck DEIR

Based on one consolidated set of comments, or memos provided by City staff on the Revised New ADEIR, PBS&J will prepare a Screencheck DEIR that will incorporate modifications made to the ADEIR for the City to ensure that all agreed to revisions are incorporated prior to publication. It is assumed that review of the Screencheck DEIR will not result in any new technical analysis or substantial text revisions. It is also assumed that City staff and the applicant will come to the PBS&J office to review the Screencheck DEIR.

Work Products

- 3 copies of the Screencheck DEIR plus on CD in MSWord

Subtask 2.4: Prepare Draft EIR

After City and applicant review of the Screencheck DEIR, PBS&J will incorporate one set of consolidated comments to revise the Screencheck DEIR and prepare the DEIR for the required 45-day public review.

PBS&J will also prepare the NOC and file the NOC and 15 copies of the DEIR with the State Clearinghouse. PBS&J will submit an electronic version of the document to the State Clearinghouse and to the City for posting on the City's website, as encouraged by the state CEQA Guidelines.

This Scope of Work assumes the City will prepare the Notice of Availability (NOA), mail notices to interested parties, and advertise the document's availability in the appropriate newspaper.

PBS&J will attend a public hearing to take comments on the DEIR. During the public hearing, PBS&J staff will be available to answer questions regarding the DEIR, answer general questions regarding the environmental review process, and make note of significant comments raised by the interested public.

Work Products

- 50 copies of the DEIR with 50 CDs of the technical appendices in .pdf
- 15 copies of the technical appendices
- 25 CDs with the DEIR in pdf format
- 1 copy of the DEIR on CD in .pdf format
- 15 copies for the State Clearinghouse plus the NOC

TASK 3: Prepare FINAL EIR

Public and agency comments on the DEIR generally require only clarification and expansion of the EIR analysis and/or recognition of the commentors' concerns about the project being considered. In some cases, however, additional analysis may be required. Because new impacts can trigger recirculation of the DEIR, which could alter the project schedule, it is important to identify issues for recirculation as quickly as possible. Therefore, PBS&J will begin preparation of the Final EIR (FEIR) after reviewing all public and agency comments, followed by a meeting with City staff to discuss the most critical comments. This approach is intended to ensure that critical path items are identified immediately, and that the most difficult or sensitive comments receive ample attention.

After the close of the 45-day public comment period on the DEIR, PBS&J will prepare written responses to written comments received on the DEIR and will prepare the Administrative FEIR (AFEIR). Comment letters will be organized by federal, state, local jurisdiction, members of the public and by date received. All comments will be numbered (to indicate comment letter and comment number), and the responses to those comments will be similarly numbered to allow easy correlation. In addition, where necessary, the text of the DEIR will be revised in redline/strike-out format to indicate text that has been deleted (by strike-out) or new text has been inserted (by underline). Possible master responses (responses that address major, repetitive comments on the document) will also be identified.

The amount of scrutiny the project will generate is uncertain; therefore, it is not possible to accurately estimate the level of effort required to respond to comments on the DEIR. However, for the purposes of this scope, it is assumed that responses to comments on the DEIR for preparation of the AFEIR will require approximately 100 hours of technical staff time, which is a moderate amount of comments. If comments received exceed this assumed level of effort, PBS&J will contact the City and the applicant regarding a revised scope and budget for this task.

The FEIR will include:

- List of commenters;
- Comments and responses to comments; and
- Summary of text changes.

The text change chapter will summarize changes in chapters/sections of the DEIR made in response to comments received.

Subtasks and deliverables to be completed in preparing the FEIR are described below.

Subtask 3.1: Administrative Final EIR

PBS&J will prepare an AFEIR for City and applicant review.

Work Products

- 15 copies of the AFEIR plus one electronic copy in MS Word

Subtask 3.2: Screencheck Final EIR

Based on one consolidated set of comments on the AFEIR provided by the City, PBS&J will revise the AFEIR and prepare a Screencheck FEIR for City review. The Screencheck FEIR will incorporate modifications made to the AFEIR in track changes and will be provided to the team to ensure that all agreed to revisions are incorporated prior to publication. It is assumed that review of the Screencheck FEIR will not result in any new technical analysis or substantial text revisions.

Work Products

- 3 copies of the Screencheck FEIR

Subtask 3.3: Final EIR

PBS&J will revise the Screencheck FEIR and prepare the FEIR. It is assumed that the FEIR will be distributed by the City at least 10 days prior to the EIR certification hearings.

Work Products

- 30 copies of the FEIR
- 1 copy of the FEIR on CD in .pdf format

TASK 4: MITIGATION MONITORING PROGRAM (MMP)

PBS&J will prepare a draft MMP for City review and comment. The MMP will be prepared in an agreed to format and will consist of:

- All mitigation measures;
- Timing/frequency of action;
- Responsibility for implementation;
- Responsibility for Monitoring;
- Standards for compliance; and
- Verification of compliance.

To the extent possible, monitoring and implementation will be tied to existing City processes and mechanisms.

The Draft MMP will be submitted with the AFEIR for City review. Following review, PBS&J will revise the MMP for inclusion in the FEIR.

Work Products

- The MMP will be bound in the FEIR.

TASK 5: PROJECT MANAGEMENT

PBS&J's Project Manager, Christine Kronenberg, AICP, will oversee preparation of each component of the environmental analyses and coordinate interaction between the EIR team, including City staff, and the applicant and its consultants. Emily Bacchini will serve as the Deputy Project Manager and will oversee document production and will be available to assist the Project Manager and the EIR team. Cathy McEfee, Technical Director, will review each product before it is submitted to the team and is available to assist in identifying a CEQA strategy or with any other issues that may arise. This scope and budget assumes approximately four hours per week for the Project Manager, and two hours per week for the Deputy Project Manager.

TASK 6: MEETINGS AND PUBLIC HEARINGS

This Scope of Work assumes the PBS&J project manager or staff will attend a total of 22 meetings with the City and applicant, including 4 public meetings/hearings described below.

This scope and budget assumes four hours per meeting (inclusive of travel time) for the Project Manager to attend meetings in the City of Auburn.

- PBS&J will attend a total of up to six public meetings and hearings.

This scope and budget assumes six hours per public meeting, including preparation time, for the Project Manager and Deputy Project Manager. Additional meetings or additional staff attendance at meetings can be added on a time and materials basis.

PBS&J will coordinate with City staff to prepare any handouts and graphics and will be prepared to assist with the environmental presentation, if requested. This scope assumes the City will prepare and mail notices for the public meetings.

TASK 7: FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

In consultation with the City attorney, PBS&J will draft the Findings of Fact and Statement of Overriding Considerations for City review using a format to be provided by the City. PBS&J will revise the Findings document based on one set of comments provided by the City and will provide the final document to the City for inclusion with the final staff report.

Work Products

- 1 electronic copy of the draft Findings of Fact and Statement of Overriding Considerations in MS WORD
- 5 copies of the Findings of Fact and Statement of Overriding Considerations
- Findings of Fact and Statement of Overriding Considerations on CD in .pdf format

In order for the EIR to appropriately reflect the details of the project and to be prepared efficiently, PBS&J will commence work on revising these sections upon receipt of the outstanding informational items noted above.

The labor budget to prepare the revised EIR is outlined on the attached spreadsheet and is estimated at \$234,219. This budget estimate includes PBS&J bill rates that went into effect January 2009. Labor (\$208,370) plus expenses and the contingency (\$25,925) brings the total budget to \$234,219 including PBS&J markup.

This is an estimate of the amount of labor anticipated to revise these sections. If the level of effort is less than anticipated PBS&J will only invoice for the work required.

Budget Assumptions

Task 2.1: Document Production/Technical Review (ADEIR)

There are a total of 18 chapters/sections that are substantive and will need to be reviewed for technical accuracy and consistency. For this task the Project Manager will spend an average of 3.3 hrs/section or chapter for a total of 60 hours.

The Deputy Project Manager is responsible for all document production and coordination with word processing and graphics. This task assumes a total of 35 hours.

Task 2.2: Revised (2nd) New ADEIR

For this task the Project Manager will need to review the entire document to ensure all revisions/edits received on the ADEIR have been made to the document and that all the

changes are consistent throughout the entire document. For this task the Project Manager will spend 1.5 hrs/section (chapter) for a total of 27 hrs.

The Deputy Project Manager is responsible for all document production and coordination with word processing and graphics to address all revisions and to prepare the Revised New ADEIR version of the document. This task assumes a total of 22 hours.

Task 2.3: Screencheck DEIR

For this task the Project Manager will spend 12 hours reviewing the document to ensure all final edits made to the Revised New ADEIR have been incorporated in the Screencheck document.

The Deputy Project Manager will spend up to 18 hours for document production.

Task 5: Project Management

For this task it is assumed that over an 11 month period (does not include the 6 week DEIR public review period) the Project Manager would spend an average of 4 hrs/week of project management time which equals 144 hrs (44 wks x 4hrs = 176 hrs). The Deputy Project Manager would spend an average of 2hrs/wk of project management time or 72hrs (44 wks x 2 hrs = 88 hrs).

Task 6: Project Meetings

For this task it is assumed the Project Manager would attend a total of 22 internal team meetings (22 x 4 hrs per meeting = 88 hrs) over the 10 month EIR schedule. The Deputy Project Manager would be available to attend up to 5 internal meetings for a total of 20 hrs.

Attendance at a total of up to six public hearings. (Assuming 6 hrs per meeting x 6 = 36 hrs). The Project Manager and Deputy Project Manager would attend all meetings.

Contingency Budget

The contingency budget is 5 percent of the labor budget, or \$10,400. It is assumed the contingency budget would be used for project management tasks, time for the Technical Director, additional meetings, and/or any other task not anticipated in this scope of work.

The estimated cost is based on the work program outlined in the scope of work and key issues and the following assumptions:

- PBS&J costs are based on the assumption that any technical studies prepared by the applicant are complete and will form the basis of relevant impact analyses. In addition, the proposed budget is based on the applicant providing the level of detail necessary in the project description to prepare a project-level analysis for Phase I and II of the specific plan and a program-level analysis for the parcels in the Urban Reserve.

- The budget includes a contingency for issues that might arise outside of the scope of this EIR. In the event access to the contingency is required it will require approval of the City's Community Development Director.
- The NOP and Project Description will only go through one round of City and applicant review. Should additional reviews be required this may necessitate a budget augment,
- Should additional technical analysis be required in the EIR beyond that identified in this scope of work following public and agency review of the NOP and/or comments received on the DEIR, PBS&J would renegotiate the budget to include any additional work upon specific direction and authorization by the applicant and the City.
- PBS&J will analyze a total of four project alternatives (including the No Project Alternative). PBS&J assumes the project applicant and/or the city representative will provide information on alternatives, where applicable, for PBS&J to use in describing and evaluating alternatives.
- Additional meetings and hearings or attendance of additional staff beyond what is listed above will be negotiated separately, at the written request of the applicant. The cost of public meetings/hearings is based on individual billing rates and mileage (see attached compensation schedule).
- If the project extends beyond the proposed schedule, for reasons outside of PBS&J's control, PBS&J will have the right to submit a revised set of billing rates and make concomitant adjustments in the project budget.

Factors that would increase the scope of work and estimated costs outlined in this scope of work include: new issues to be evaluated in response to the NOP; attendance at additional public meetings; printing of additional copies of reports or the need to distribute additional ADEIR and AFEIR versions of the document; analysis of additional issues above those discussed in this scope of work or a more detailed level of analysis than described in this scope of work; changes in the project requiring reanalysis or rewriting of report sections; collection of data required for the EIR beyond that described in this scope of work; attendance at additional in-house meetings beyond those budgeted; and excessive comments on the internal review drafts of the products addressing out of scope items. PBS&J will notify applicant representatives immediately if any of these conditions appear to be likely to occur. We would propose to renegotiate these items, if required, or charge on a time-and-materials basis. The estimated cost is based on all team members' standard hourly rates consistent with PBS&J's Billing Rate Schedule.

PBS&J will prepare the following products and number of copies of each product:

- Draft NOP – 15 copies
- Final NOP – 35 copies + 15 copies State Clearinghouse + CD
- ADEIR – 15 copies + 2 CDs
- New (2nd) ADEIR – 5 copies
- Screencheck DEIR – 3 copies
- DEIR – 50 copies + 25 CDs + 15 copies State Clearinghouse + 15 copies of the appendices + 50 CDs of the appendices
- AFEIR – 15 copies + 2 CDs
- Screencheck FEIR – 3 copies
- FEIR – 35 copies + 2 CDs
- Findings – 5 copies

- Printing expenses contained in this scope of work are estimates only. Printing will be charged based on actual cost plus PBS&J's administrative fee.
- The City will prepare public notices and distribute the NOP, DEIR, and FEIR to the appropriate public agencies and interested parties. PBS&J will prepare the NOC and deliver 15 copies of the NOP and DEIR to the State Clearinghouse.
- PBS&J will provide the City with electronic versions of the NOP, DEIR and FEIR on CD. PDF files of the products will be provided to the City for posting on the web page.

cc: Reg Murray
Adrienne Graham
Stephen DeJardins



December 19, 2008

Ms. Christine Kronenberg
EIP Associates, Inc.
Transmitted Via E-Mail

Subject: Proposal to Revise the Noise Analysis for the Baltimore Ravine Specific Plan EIR Based on the Revised Site Plan & Phasing.

Dear Christine:

I have reviewed the revised site plans for the Baltimore Ravine Specific Plan Project and have developed this scope of additional work based on that information.

Scope of Work:

1. **Impact Assessment Update:** Bollard Acoustical Consultants will identify all significant noise impacts associated with the revised site plan due to and upon development within the proposed Baltimore Ravine Specific Plan Area. Significant noise impacts will be identified if the project-generated traffic or on-site activities result in a significant increase in noise levels at existing noise-sensitive land uses in the project vicinity. In addition, noise impacts associated with future development within the Baltimore Ravine Specific Plan will be addressed as well. Specifically, the noise analysis prepared for this project will assess the potential for noise impacts due to and upon development of residential and other noise-sensitive and noise-producing uses within the plan area. Specific sources of noise to be revisited for the assessment of on-site noise sources include project construction (including rock crushing/screening if still applicable), railroad, and traffic noise.
2. **Noise Mitigation Measures:** The revised analysis of noise mitigation measures will focus on appropriate and practical recommendations for noise control aimed at reducing any identified potential noise impacts to a level of insignificance.

Ms. Christine Kronenberg
EIP Associates, Inc.
December 19, 2008
Page 2

3. **Preparation of a Revised Administrative Draft EIR Noise Section:** Bollard Acoustical Consultants will provide a written report for use in the development of the Noise Section of the Administrative Draft Project EIR. The report will contain the results of the findings based on the revised site plan. The report will be provided as a stand-alone technical analysis in both camera-ready hard copy and on electric media. Bollard Acoustical Consultants, Inc. does not propose to provide final formatting of the section for direct inclusion into the document, but we will follow your style guidelines as much as possible.
4. **Responses to Comments on DEIR:** BAC will provide written responses to all noise-related comments pertaining to the ADEIR and will make revisions as appropriate to the DEIR in response to those comments. This proposal allocates 16 hours for responses to comments. Extensive comments requiring in excess of 16 hours to complete would incur additional expense at our normal hourly rates.
5. **Attendance at Meetings or Public Hearings:** This proposal includes attendance at 2 meetings or public hearings.

Timing of the Noise Study:

We will complete the revised study within 5 weeks of authorization to proceed and receipt of all required materials (site plans, traffic study, project description).

Cost of the Study:

Bollard Acoustical Consultants will conduct the above-described scope of work for a total fee of \$6,500 including expenses.

Thank you again for inviting our proposal, and please call me if you have any questions.

Sincerely,

Bollard Acoustical Consultants, Inc.



Paul Bollard
President

EXHIBIT B
APPROVED FEE SCHEDULE

**California Science and Planning
HOURLY BILLING RATES AND JOB CLASSIFICATIONS**

Sr Division Manager/ Principal Technical Professional	\$190–\$300/hour
Sr Group Manager/Project Director/ Sr Planner IV/ Sr Scientist IV/ Sr Engineer IV	\$175–\$300/hour
Group Manager/ Sr Project Manager III/ Sr Planner III/ Sr Scientist III/Sr Engineer III	\$140–\$200/hour
Project Manager/ Sr Planner II/ Sr Scientist II/Sr Engineer II/ Sr GIS Analyst II	\$120–\$170/hour
Associate Project Manager /Sr Planner I/Sr Scientist I/ Sr Engineer I/Sr GIS Analyst I	\$95–\$135/hour
Planner II/ Scientist II/Engineer II	\$85–\$120/hour
Planner I/ Scientist I/Engineer I	\$65 –\$100/hour
Senior Administrator	\$90–\$130/hour
Senior Word Processor/Regional Graphics Specialist	\$75–\$110/hour
Word Processor	\$65–\$100/hour
Administrative/Field Technician II	\$55–\$90/hour
Planner Intern/Scientist Intern/Technician I	\$45–\$75/hour
Mileage	\$.55/mile

In addition, identifiable, non-salary costs that are directly attributable to the project (i.e., travel, meals, lodging, auto rentals, printing and copies, graphic materials, phone charges, equipment and specialized computer charges, etc.) and subcontractor fees include a 15% administration charge to cover overhead and administration.

1. This schedule is effective until March 31, 2009 and is subject to annual and/or periodic revisions thereafter, as necessary to accommodate inflationary trends, salary adjustments, and the general costs of business.
2. Invoices will be submitted by Consultant monthly. Client will notify Consultant, in writing, of any objections to an invoice within ten (10) days of the date of invoice. Otherwise, the invoice shall be deemed acceptable by the Client. Amounts indicated on invoices are due and payable immediately upon receipt.
3. A late payment finance charge at a rate of 18% per annum (or the maximum amount allowed per law if lower) will be applied to any unpaid balance commencing 30 days after the date of the original invoice.
4. Fees for litigation and expert witness services will be charged at \$450.00 per hour with a 4-hour minimum per day.

**Baltimore Ravine Specific Plan
Revised Environmental Impact Report
Cost Estimate**

Billing Title	Technical Director II	Senior Manager	Senior Scientist	Associate Manager	Planner I	Scientist II	Scientist II	Word Processing	Graphic IS	Hours Per Task	Cost Per Subtask	Cost Per Task
Task 1												
1.1 Prepared revised Notice of Preparation		4	12							4	20 \$	2,580 \$
1.2 Review & Distribute NOP Comments		6	8							14	14 \$	1,940 \$
Task 2												
2.1 Prepare Administrative Draft EIR												
Introduction			4							4	4 \$	320 \$
Summary			6							6	6 \$	780 \$
Project Description			6							6	6 \$	780 \$
Land Use			16							16	12 \$	1,290 \$
Environmental Analysis										22	22 \$	2,980 \$
Aesthetics			12							8	8 \$	640 \$
Air Quality										12	12 \$	1,560 \$
Biological Resources										28	28 \$	3,760 \$
Cultural Resources										24	24 \$	2,160 \$
Geology and Soils										8	8 \$	880 \$
Hazardous Materials & Public Safety										18	18 \$	2,520 \$
Hydrology and Water Quality										18	18 \$	2,520 \$
Noise										6	6 \$	900 \$
Public Services										22	22 \$	1,760 \$
Public Utility Systems										28	28 \$	2,240 \$
Transportation and Circulation										12	12 \$	1,800 \$
CEQA Considerations										6	6 \$	780 \$
Project Alternatives										56	56 \$	7,440 \$
Document Production/Technical Review										32	32 \$	22,090 \$
2.2 Prepare revised Administrative Draft EIR		12	60	35						171	171 \$	14,280 \$
2.3 Screencheck DEIR		8	27	22	6	4	8	6	6	115	115 \$	14,280 \$
2.4 Draft EIR		6	12	18	4	2	2	2	2	72	72 \$	8,800 \$
2.5 Final EIR			12	16						46	46 \$	5,410 \$
3.1 Administrative Draft Final EIR		8	40	50	6	6	6	6	6	170	170 \$	21,140 \$
3.2 Screencheck Final EIR		8	32	32						52	52 \$	6,380 \$
3.3 Final EIR		8	12							32	32 \$	3,760 \$
Task 4												
Mitigation Monitoring Program												
MMP-ADEIR			6	36						50	50 \$	6,260 \$
MMP post-ADEIR			4	24						32	32 \$	4,050 \$
Task 5												
Project Management			8	176	88					272	272 \$	39,480 \$
Task 6												
Meetings and Public Hearings			124	56						186	186 \$	26,420 \$
Task 7												
Findings of Fact												
Draft Findings			6	40						54	54 \$	6,780 \$
Revisions to Findings				12						16	16 \$	1,900 \$
Total Hours		42	525	559	70	20	74	44	44	192	192 \$	2,370 \$
Hourly Rate		\$ 205	\$ 150	\$ 130	\$ 140	\$ 110	\$ 80	\$ 135	\$ 90	\$ 85	\$ 105	
Total PBS&J Labor		\$ 8,610	\$ 78,750	\$ 72,670	\$ 9,800	\$ 2,200	\$ 5,920	\$ 5,940	\$ 3,960	\$ 16,320	\$ 4,200	\$ 208,370
Subconsultants												
Bollard Acoustical Consultants												\$ 6,500
Expenses/ODC's												\$ 7,000
Printing/Xerox												\$ 6,000
Travel/Misc												\$ 1,900
Total ODC's/Subconsultants												\$ 23,500
Subtotal												\$ 221,870
PBS&J Administration Fee (15% of ODC's and Subconsultants)												\$ 2,025
TOTAL BUDGET WITHOUT CONTINGENCY												\$ 223,895
Budget Contingency												\$ 10,400
TOTAL BUDGET WITH CONTINGENCY												\$ 234,295

1 RESOLUTION NO. 09-

2 RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
3 ADRIENNE L. GRAHAM
4 -----

5 THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City of Auburn (City) does hereby approve an amended
7 Professional Services Agreement between Adrienne L. Graham and the City to
8 oversee the preparation and review of the Baltimore Ravine Specific Plan and
9 Environmental Impact Report.

10 The Community Development Director is hereby authorized and directed
11 to execute said Professional Services Agreement on behalf of the City.

12
13 DATED: February 9, 2009
14

15 _____
16 J.M. Holmes, Mayor

17 ATTEST:

18 _____
19 Joseph G. R. Labrie, City Clerk
20

21 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
22 that the foregoing resolution was duly passed at a regular meeting of the City
23 of Auburn held on the 9th day of February, 2009 by the following vote on roll
24 call:

25 Ayes:
26 Noes:
27 Absent:

28 _____
Joseph G. R. Labrie, City Clerk

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn / Adrienne L. Graham, AICP)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and Adrienne L. Graham, AICP, a sole proprietor ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: coordination of the Baltimore Ravine Specific Plan and Environmental Impact Report, as described in Exhibit A.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 9, 2009, 2009 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 9, 2009, fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": February 3, 2009.
- 3.4 "Expiration Date": Completion of the specific plan for the Baltimore Ravine Project.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any

such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Sixty-five Thousand Dollars (\$65,000) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Adrienne Graham shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of

Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against

any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's

performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
- 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees,

agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x140
Facsimile: (530) 823-4216

If to Consultant:

Adrienne L. Graham, AICP
4533 Oxbow Drive
Sacramento, CA 95864
Telephone: (916) 206-0135
Facsimile: (916) 487-4123

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the

effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition

to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
Adrienne L. Graham, AICP

By _____

By: _____
Adrienne L. Graham, Sole Proprietor

Date: _____

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to form:

By _____
Michael G. Colantuono, City Attorney

Date: _____

EXHIBIT A

Baltimore Ravine Specific Plan and EIR Project Planner Scope of Services

The Consultant will oversee the preparation and County review of the Baltimore Ravine Specific Plan and Environmental Impact Report. The Specific Plan will be prepared by the Applicant's consultants. The EIR will be prepared by PBS&J/EIP Associates under contract to the City.

Labor will be billed at \$140/hour. Mileage will be billed at \$0.50/mile. Indirect costs will be subject to a 10 percent administrative fee.

Specific tasks are identified below.

1. Coordinate and attend regularly scheduled team meetings and meetings with City staff, other agencies, the applicant and consultants, as needed. Up to 40 meetings are assumed.
2. Attend Planning Commission and City Council hearings and meetings on the project and an NOP scoping meeting. Up to 6 hearings are assumed.
3. Keep the Community Development Director and Senior Planner apprised of the status of the Specific Plan and EIR and issues that need to be addressed by the City as they arise.
4. Communicate with City staff regarding Specific Plan and EIR issues as needed.
5. Work with the Applicant and the applicant's consultant to ensure that City concerns are addressed as appropriate in the Specific Plan and related documents.
6. Work with EIP Associates to ensure that the City's and other agency concerns are addressed in the EIR.
7. Coordinate consultation with the County and other agencies as needed regarding Specific Plan and EIR issues.
8. Review Administrative Drafts of the NOP, Draft EIR, Final EIR and Mitigation Monitoring Plan, Specific Plan documents and Findings for CEQA adequacy and responsiveness to City and other agency concerns.
9. Review Screencheck versions of the EIR, Specific Plan documents and Findings to ensure that City comments are incorporated.
10. Maintain a project schedule.
11. Coordinate resolution of issues between the City, Applicant and consultants, as needed.
12. Prepare responses to comments on the Draft EIR as appropriate.
13. Prepare draft and/or assist with staff reports for Planning Commission and City Council items regarding the Specific Plan and/or EIR.
14. Provide support services to the City on an "as needed" basis should there be a CEQA challenge to the EIR.

EXHIBIT B
APPROVED FEE SCHEDULE

Adrienne L. Graham will bill her labor at \$140/hour

Mileage will be charged at \$0.50/mile.

A 10 percent administrative fee will be added to subconsultant and direct costs.

These rates are valid for one year (until February 2010), and may be adjusted after that time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESOLUTION NO. 09-

RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KD
ANDERSON & ASSOCIATES

THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City of Auburn (City) does hereby approve an amended
Professional Services Agreement between KD Anderson & Associates and the
City to provide technical assistance on traffic engineering issues for the
Baltimore Ravine Specific Plan and Environmental Impact Report.

The Public Works Director is hereby authorized and directed to execute
said Professional Services Agreement on behalf of the City.

DATED: February 9, 2009

J.M. Holmes, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
that the foregoing resolution was duly passed at a regular meeting of the City
of Auburn held on the 9th day of February, 2009 by the following vote on roll
call:

Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn / *KD Anderson & Associates, Inc.*)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and **KD Anderson & Associates, Inc.** a *California, Corporation* ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant for the **Baltimore Ravine Specific Plan Traffic Engineering**.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 13, 2009 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 13, 2009 fee schedule to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.3 "Commencement Date": February 9, 2009.
- 3.4 "Expiration Date": Completion of the Specific Plan for the Baltimore Ravine Specific Project.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City

shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Ten Thousand Three Hundred Five Dollars (\$10,305) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Mike Becker** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not

enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x____
Facsimile: (530) 823-4216

If to Consultant:

KD Anderson & Associates, Inc
C/O Kenneth D. Anderson
3853 Taylor Road, Suite G
Loomis, CA 95650
Telephone: (916) 660-1555
Facsimile: (916) 660-1535

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono, Levin & Rozell, APC
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4. The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term,

covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by

City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
KD Anderson & Associates, Inc.

By _____

By: _____
Kenneth D. Anderson, President

Date: _____

Date: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to Form:

By _____
City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK and FEE SCHEDULE

January 13, 2009

Mr. Jack Warren, Public Works Director
Ms. Bernie Schroeder, Engineering Division Manager
CITY OF AUBURN
1225 Lincoln Way, Room 3
Auburn, CA 95603

**RE: REVISED PROPOSAL TO PROVIDE TRAFFIC ENGINEERING
CONSULTANT SERVICES RELATING TO PEER REVIEW FOR BALTIMORE
RAVINE SPECIFIC PLAN / EIR PROJECT, AUBURN**

Dear Mr. Warren / Ms. Schroeder:

I have spoken to Adrienne Graham regarding the next steps for the **Baltimore Ravine Specific Plan / EIR Project**, and she has suggested that because the project description has changed, a new traffic study and new ADM EIR will be prepared. I have modified our August 14, 2008 work program to include review of these documents and to continue to include the work that is likely to be needed from this point forward.

Once the new traffic study is prepared, we will review the technical appendix and LOS calculations for accuracy. We will provide written comments on the report suggesting corrections or asking for clarification.

Work Program. We propose to complete the following tasks:

Task 1 Coordination / Meetings. We expect to attend meetings in Auburn to discuss the project, the ADM DEIR, the DEIR, the FEIR, Placer County comments on the ADM DEIR, etc. We have budgeted for attendance at a total of four (4) meetings in Auburn, including one meeting with the City to review our comments and to discuss the current status of the document.

Task 1 A Review / Comment New Traffic Study. Once the new traffic study is prepared, we will review the report, technical appendix and LOS calculations for accuracy. We will provide written comments on the report suggesting corrections or asking for clarification.

Task 2 Review ADM DEIR Traffic Section. We will review the new ADM DEIR traffic section with regard to the key issues affecting traffic in this area to confirm that the issues raised by the City have been addressed. We will consider whether changes are needed to fulfill the requirements of CEQA, City of Auburn General Plan guidelines or City interests as indicated by the project team. If needed, we will prepare a memorandum that will identify any recommended changes to study text, will suggest clarification of conclusions as needed, or identify additional work that will need to be completed by the traffic study authors.

Mr. Jack Warren, Public Works Director
 Ms. Bernie Schroeder, Engineering Division Manager
CITY OF AUBURN
 January 13, 2009
 Page 2

Subsequent revision to the DEIR traffic section may occur. This proposal assumes review of one (1) addition report version based on changes prescribed by this review. Subsequent review of documents with new or revised technical analysis is not included in our proposal.

Task 3 Review Public Comments / Responses on DEIR. We will review the comments received from the public on the DEIR. We will review and comment on the responses prepared by the EIR consultants.

Task 4 Attend Public Meetings. If requested by the City we will prepare for and attend up to three (3) public meetings to address comments on the report and to represent the City's interests on this matter.

Personnel. This work will be performed by myself and Michael Becker. We are both Placer County residents and have worked extensively in Auburn. I anticipate that I will be attending most meetings and the public hearings.

Budget. We propose to complete this work on a T&M basis for the fee noted below:

BALTIMORE RAVINE SPECIFIC PLAN PROJECT				
TRAFFIC STUDY PEER REVIEW				
Task	Description	Principal Hours		
		Principal Engineer	Traffic Engineer	Total
1	Coordination / Meetings (4)	16	0	16
1a	Review revised Traffic Study	16	2	18
2	Review / Comment on ADM Draft EIR	12	2	14
3	Review DEIR Comments / Responses	12	2	14
4	Public Meetings (3)	15	0	15
	Base Proposal Total	71	6	77
	Billing Rate Per Hour	\$135	\$120	
	Labor Cost	\$9,585	\$720	\$10,305
	REVISED NTE FEE			\$10,305

KDA

Mr. Jack Warren, Public Works Director
Ms. Bernie Schroeder, Engineering Division Manager
CITY OF AUBURN
January 13, 2009
Page 3

Thank you again for contacting our firm. Please feel free to contact me if you have any questions or need additional information.

Sincerely yours,

KD Anderson & Associates, Inc.

A handwritten signature in black ink, appearing to read "K. Anderson", with a long horizontal flourish extending to the right.

Kenneth D. Anderson, P.E.
President

cc: Adrienne Graham

Baltimore Ravine PEER 4.pro

KDA
89

1 RESOLUTION NO. 09-

2 RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
3 NEXGEN UTILITY MANAGEMENT
4 -----

5 THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City of Auburn (City) does hereby approve an amended
7 Professional Services Agreement between NexGen Utility Management and the
8 City to provide technical assistance on wastewater issues for the Baltimore
9 Ravine Specific Plan and Environmental Impact Report.

10 The Public Works Director is hereby authorized and directed to execute
11 said Professional Services Agreement on behalf of the City.

12
13 DATED: February 9, 2009

14
15 _____
J.M. Holmes, Mayor

16 ATTEST:

17
18 _____
Joseph G. R. Labrie, City Clerk

19
20
21 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
22 that the foregoing resolution was duly passed at a regular meeting of the City
23 of Auburn held on the 9th day of February, 2009 by the following vote on roll
call:

24 Ayes:
25 Noes:
26 Absent:

27 _____
Joseph G. R. Labrie, City Clerk

28

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn / NexGen Utility Management.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and NexGen Utility Management, Inc. a *California, Corporation* ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant for the **Baltimore Ravine Specific Plan Evaluation of Wastewater Treatment and Water Reclamation Facilities**.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 14, 2009 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 14, 2009 fee schedule to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.3 "Commencement Date": February 9, 2009.
- 3.4 "Expiration Date": December 31, 2009.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City

shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Sixteen Thousand Dollars (\$16,000) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Dan Rich** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x____
Facsimile: (530) 823-4216

If to Consultant:

NexGen Utility Management
C/O Dan Rich
2150 River Plaza Drive, Ste 345
Sacramento, CA 95833
Telephone: (916) 564-8005
Facsimile: (888) 820-8880

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono, Levin & Rozell, APC
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with

respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
Name of Company or Individual

By _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Date: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to Form:

By _____
City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK and FEE SCHEDULE



January 14, 2009

Ms. Bernie Schroeder
Engineering Division Manager
City of Auburn
1225 Lincoln Way, Rm 3
Auburn, CA 95603

**RE: PROPOSAL TO UPDATE THE CITY OF AUBURN WASTEWATER TREATMENT PLANT
EXPANSION STUDY FOR THE BALTIMORE RAVINE SPECIFIC PLAN (BRSP)**

Dear Bernie:

This letter provides our proposed scope of work to update the Wastewater Treatment Plant Expansion Study Report completed in support of the Baltimore Ravine Specific Plan (BRSP). It is our understanding that the development projections contained in BRSP and Study Area Environmental Impact Report (April 2008) have been reduced. The City is interested to determine wastewater facilities needed to serve the smaller project and include that information in a subsequent Draft EIR. The following scope of work is proposed:

- Task 1- Attend one meeting with City Staff to review recent flow data, recent discharge permit changes, City development projections, and revised BRSP development assumptions.
- Task 2- Update the analysis to reflect the revised project description and development estimates. Specific emphasis will be placed on identifying facilities needed prior to project construction and facilities needed prior to project completion. We will follow the same general format of the first report.
- Task 3- Prepare a Draft Report for City Staff and project development team review. After review, the Final Report will be prepared and become an appendix of the DEIR. We will prepare 5 hardcopies of the Draft Report and 5 hardcopies of the Final Report as well as electronic PDF versions of both reports for use by the project team.
- Task 4- Attend one meeting with the project development team to review draft findings, report requirements, and other scheduling aspects of the update to the EIR and Specific Plan. As before, we would expect some coordination between NEXGEN and the project development team as to what information from the Report should be included into the DEIR.

4010 Lennane Drive, Sacramento, CA 95834
T 916-564-8000 www.nexgenum.com

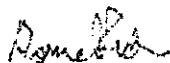
Ms. Bernie Schroeder
BRSP WWTP Expansion Study Update
January 14, 2009
Page 2

We propose to complete this work on a time and materials basis at our current billing rates with the City. The proposed budget is estimated at \$16,000. The budget by major task is provided below.

Task Name	Project Manager	Project Engineer	Drafting	Labor (hr)	Labor (\$)	Exp	Total Cost
Task 1- Meet with City, Review Info	8	8		16	\$ 2,480	\$ 100	\$ 2,580
Task 2- Complete Analysis	16	20		36	\$ 5,480	\$ 100	\$ 5,620
Task 3- Prepare Draft and Final Report	16	16	8	40	\$ 5,760	\$ 500	\$ 6,260
Task 4- Coordinate with Project Team	8			8	\$ 1,440	\$ 100	\$ 1,540
Total =	48	44	8	100	\$15,160	\$ 800	\$ 16,000

We can complete the draft report within 3 weeks of notice to proceed by the City. Thank you for the opportunity to continue to serve the City in support of its wastewater planning needs. If you have questions regarding this proposal, please contact me at 916-779-7301

Sincerely,



Dan Rich, P.E.
NEXGEN Utility Management

